

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JILL MUEHLENKAMP,

Plaintiff,

ORDER

v.

17-cv-300-wmc

ANDREW SAUL,  
Commissioner of Social Security,

Defendant.

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On October 24, 2017, the court issued an order and judgment remanding this case to the commissioner for further proceedings under sentence four of 42 U.S.C. § 405(g) pursuant to stipulation of the parties. Now before the court is plaintiff Jill Muehlenkamp's attorney's petition for fees pursuant to § 406(b)(1) in the amount of \$631.37 (dkt. #20), to which defendant has not objected (dkt. #22).

**Fees under 42 U.S.C. § 406**

As part of its judgment, a court may allow "a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits" awarded to the claimant. § 406(b)(1)(A). The fee is payable "out of, and not in addition to, the amount of [the] past-due benefits." *Id.* Counsel asks the court to approve an attorney fee award in the amount of \$631.37, which represents \$13,967.50 withheld from the amount awarded to plaintiff in past-due benefits less the prior EAJA fee awards totaling \$13,336.13.<sup>1</sup> Having considered the supporting

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<sup>1</sup> The court notes \$13,967.50 was withheld from past-due benefits; however, counsel was previously awarded EAJA fees in the amount of \$5,336.13 (dkt. #18) in this case and awarded \$8,000 in EAJA fees in related case no. 14-cv-449.

materials filed by plaintiff's attorney, and hearing no objection from plaintiff or defendant, the court will grant the motion. The fees requested by counsel are reasonable in light of the time he spent on this case and the favorable result he obtained for plaintiff while working on a contingency basis.

Of course, counsel is not allowed to recover both awards. Section 406(b) has been harmonized with the EAJA; though fee awards may be made under both the EAJA and § 406(b), a claimant's attorney must refund to the claimant the amount of the smaller fee. *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (explaining that “an EAJA award offsets an award under Section 406(b)”).

#### ORDER

IT IS ORDERED that counsel's motion for reasonable attorney fees under 42 U.S.C. § 406(b)(1) in the amount of \$631.37 (dkt. #20) is GRANTED.

Entered this 14th day of April, 2020.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge